

MATTER OF MILIAN
In Adjustment of Status Proceedings

A-18818658

Decided by Acting Regional Commissioner February 6, 1970

An alien, not a native or citizen of Cuba, who was inspected and admitted as a nonimmigrant subsequent to January 1, 1959, who has been physically present in the United States for at least 2 years and who is residing with her husband in the United States, is, as the spouse of a native and citizen of Cuba who was paroled into the United States subsequent to January 1, 1959 and has been physically present in the United States for at least 2 years, eligible to apply for adjustment of status under section 1 of the Act of November 2, 1966, notwithstanding her marriage to such native and citizen of Cuba occurred subsequent to the latter's adjustment of status under the provisions of that Act.

This case comes forward by certification from the District Director, Miami, Florida, who denied the application on the ground that the applicant is statutorily ineligible for the benefits of section 1 of the Act of November 2, 1966.

The applicant is a native and citizen of Nicaragua who last arrived in the United States on June 11, 1968 and was admitted as a nonimmigrant visitor. She was granted extensions of stay, the last to expire on March 11, 1970. She has resided in the United States from September 15, 1967 through April 14, 1968 and from June 11, 1968 to the present, a period well over two years. The record establishes that the applicant was married on October 28, 1968 to a native and citizen of Cuba who is an alien lawfully admitted to the United States for permanent residence. The status of the applicant's spouse had been adjusted to that of a lawful permanent resident on June 30, 1968 under the provisions of section 1 of the Act of November 2, 1966.

The District Director has denied the application on the ground that the applicant's husband is not an alien described in section 1 of the Act of November 2, 1966. The District Director states that an alien so described is one who:

1. Is a native or citizen of Cuba and